

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 15-86:

CITY OF KALISPELL,

Complainant,

-vs-

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES, LOCAL NO. 256,
AFL-CIO,

Defendant.

ORDER

* * * * *

On June 23, 1986 the Complainant, City of Kalispell, filed an unfair labor practice charge with the Board of Personnel Appeals alleging that the Defendant, American Federation of State, County and Municipal Employees, Local No. 256, AFL-CIO violated Section 39-31-402(2) MCA by refusing to negotiate in good faith.

In its answer filed with the Board on July 2, 1986 the Defendant denied any violation of Section 39-31-402(2) MCA. This Board conducted an investigation in this matter and issued an investigation report on August 18, 1986. The report found probable merit for the charge and concluded that the formal hearing in the matter was appropriate.

After the investigation report was issued the Defendant, on December 24, 1986, moved that the matter be deferred to arbitration under the Collyer doctrine. See Collyer Insulated Wire, 192 NLRB #37, 77 LRM 1911 (1971).

A review of the pleadings and other documents on file in this case compels the conclusion that the matter be deferred to arbitration. In 1982 the Board of Personnel Appeals in William M. Converse, IAFF Local No. 436 v. Anaconda-Deer Lodge County, WLP 43-81 and James F. Foreman,

1 IAPF Local No. 436 v. Anaconda-Deer Lodge County, ULP 44-81,
2 upheld the policy of deferring unfair labor practice charges
3 such as the one raised here to the parties contract griev-
4 ance machinery. The Board held specifically that deferral
5 was appropriate where:

- 6 1. the dispute arises within the
7 confines of a stable collective
8 bargaining relationship without any
9 assertion of enmity by the parties;
- 10 2. the parties are willing to arbi-
11 trate the issue and waive any
12 procedural defense that the matter
13 was not timely filed; and
- 14 3. the dispute centers on an interpre-
15 tation of the contract.

16 In the instant case there is no indication that the
17 dispute does not arise within the confines of a stable
18 collective bargaining relationship. There is nothing to
19 suggest that the parties' relationship, either past or
20 present, would render the use of the grievance-arbitration
21 process futile. Both parties have indicated a willingness
22 to have an arbitrator decide the matter; therefore, any
23 procedural issues of timeliness should not be raised. The
24 issue in dispute is covered by the collective bargaining
25 agreement between the parties dated July 1, 1985. The
26 agreement contains a grievance procedure which culminates a
27 final and binding arbitration. The dispute centers on the
28 interpretation of the parties' collective bargaining
29 agreement and resolution of the contract issue dispute by an
30 arbitrator will dispose of the unfair labor practice issue.

31 The Board of Personnel Appeals has the authority to
32 hear this case under the provisions of Section 39-31-403
MCA. However, the policies and provisions of the act,
specifically Sections 39-31-101 and 39-31-306 MCA, will be
best effectuated if the matter is deferred to arbitration

1 under the parties' collective bargaining agreement. The
2 Board will retain jurisdiction of this matter for purposes
3 of insuring that the arbitration takes place and for deter-
4 mining whether the procedures were fair.

5 IT IS THEREFORE ORDERED that this dispute be deferred
6 to arbitration under the provisions of the parties' collec-
7 tive bargaining agreement.

8 Dated this 8th day of January, 1987.

9
10 BOARD OF PERSONNEL APPEALS

11
12 By: Jack H. Calhoun
13 Jack H. Calhoun, Chief
14 Appeals Bureau

15 * * * * *

16 CERTIFICATE OF SERVICE

17 I, Jennifer Jacobson, do certify that a true
18 and correct copy of this document was mailed to the follow-
19 ing on the 8th day of January, 1987;

20 George F. Hagerman
21 Field Representative
22 Montana Council No. 9
23 AFSCME, AFL-CIO
24 P. O. Box 5356
25 Helena, MT 59604

26 Don Klepper, Representative
27 City Council Kalispell
28 P. O. Box 4152
29 Missoula, MT 59806

30
31 AB2:047bd
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